



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

FEB - 3 2016

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7015 1730 0000 9218 9036

Mr. Barry Griffiths, Crop Manager
Stitzel's Waterpoint Farms, Inc.
P.O. Box 207
105 Waterpoint Drive
Springfield Center, New York 13468

Re: **Administrative Docket No. CWA-02-2016-3017**
Stitzel's Waterpoint Farms, Inc., 105 Waterpoint Drive, Springfield Center, New York
SPDES Permit No. NYA000194
Clean Water Act Information Request and Administrative Compliance Order


Dear Mr. Griffiths:

The United States Environmental Protection Agency ("EPA"), Region 2, has made a finding that Stitzel's Waterpoint Farms, Inc. ("Respondent") is in violation of the Clean Water Act (33 U.S.C. § 1251 *et seq.*) ("CWA" or "Act") for its failure to comply with the terms and conditions of the State Pollutant Discharge Elimination System ("SPDES") General Permit for Concentrated Animal Feeding Operations ("CAFOs") General Permit No. GP-04-02 ("CAFO General Permit" or "Permit"). Enclosed is an Information Request and Administrative Compliance Order (together the "Order"), Docket No. CWA-02-2016-3017, issued pursuant to Sections 308 and 309 of the CWA, which details the findings.

Please acknowledge receipt of this Order by signing the acknowledgment page and returning the acknowledgment page by mail in the enclosed envelope. Failure to comply with the enclosed Order may subject the Respondent to civil/criminal penalties pursuant to Section 309 of the CWA and subject the Respondent to ineligibility for participation in work associated with Federal contracts, grants or loans.

Also enclosed is the Inspection Report for the inspection of the Facility conducted by the EPA on October 27, 2015. If you have any questions regarding the enclosed Order, please contact Ms. Justine Modigliani, P.E., Chief, Compliance Section, at (212) 637-4268.

Sincerely,


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

cc: Joseph DiMura, P.E, Director, Bureau of Water Compliance Programs, NYSDEC
Erica Cruden, NYSDEC Region 4, (erica.cruden@dec.ny.gov)
William Gallinger, CAFO Planner, (bgallin@twcny.rr.com)

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

Stitzel's Waterpoint Farms, Inc.
P.O. Box 207
105 Waterpoint Drive
Springfield Center, New York 13468

RESPONDENT

Proceeding pursuant to Sections 308(a) and 309(a)
of the Clean Water Act, 33 U.S.C. §§ 1318(a) and
1319(a).

**ADMINISTRATIVE
COMPLIANCE ORDER**

CWA-02-2016-3017

A. STATUTORY AUTHORITY

The following Information Request and Administrative Compliance Order (together the "Order") is issued pursuant to Sections 308(a) and 309(a) of the Clean Water Act ("CWA"), respectively, 33 U.S.C. §§ 1318(a) and 1319(a). These authorities have been delegated by the Administrator of the United States Environmental Protection Agency ("EPA") to the Regional Administrator, EPA Region 2 and further delegated to the Director of the Division of Enforcement and Compliance Assistance, EPA Region 2.

1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes it unlawful for any person to discharge any pollutant from a point source to waters of the United States, except, among other things, with the authorization of, and in compliance with, a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
2. Section 402 of the CWA, 33 U.S.C. § 1342, authorizes the Administrator of the EPA to issue a NPDES permit for the discharge of any pollutant, or combination of pollutants, subject to certain requirements of the CWA and conditions which the Administrator determines are necessary. The New York State Department of Environmental Conservation ("NYSDEC") is the agency with the authority to administer the federal NPDES program in New York pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b). A State Pollutant Discharge Elimination System ("SPDES") permit is required to be issued by the NYSDEC to facilities for the discharge of pollutants from point sources to navigable waters of the United States. The EPA maintains concurrent enforcement authority with authorized States for violations of the CWA and permits issued by authorized States thereunder.
3. The Administrator of EPA has promulgated 40 C.F.R. § 122.23(a), which requires operators to obtain a NPDES permit for discharges or potential discharges associated with Concentrated Animal Feeding Operations. 40 C.F.R. § 122.23 establishes requirements for discharges associated with Concentrated Animal Feeding Operations, including all animals or the production of those animals, regardless of the type of animal.

4. "Person" is defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), to include any individual, corporation, partnership, association or municipality.
5. "Discharge of a pollutant" is defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12), to include any addition of any pollutant to navigable waters from any point source.
6. "Pollutant" is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), to include among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water.
7. "Point source" is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to include any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.
8. "Navigable waters" is defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), as the waters of the United States, including the territorial seas, and further defined by 40 C.F.R. § 122.2, to include: all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; all interstate waters, including interstate "wetlands;" all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce, including tributaries thereto.
9. "Owner or operator" is defined by 40 C.F.R. § 122.2 as the owner or operator of any facility or activity subject to regulation under CWA Section 402.
10. An "animal feeding operation" or "AFO" is defined by 40 C.F.R. § 122.23(b)(1) as a lot or facility where animals have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve-month period, and where crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.
11. A "concentrated animal feeding operation" or "CAFO" is defined by 40 C.F.R. § 122.23(b)(2) as an AFO that is, *inter alia*, a large CAFO or medium CAFO.
12. A "medium CAFO" is defined by 40 C.F.R. § 122.23(b)(6) as, *inter alia*, an animal feeding operation that stables or confines 200-699 mature dairy cows, whether milked or dry, and which, as relevant here, discharges pollutants into waters of the United States through a man-made ditch, flushing system, or other similar man-made device.
13. "Process wastewater" is defined by 40 C.F.R. § 122.23(b)(7) as water directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing or cleaning or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control.

Process wastewater also includes any water which comes in contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.

14. "Production area" is defined by 40 C.F.R. § 122.23(b)(8) as that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas.
15. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), provides, in relevant part, that the Administrator of the EPA may require the owner or operator of any point source to, among other things: establish and maintain such records; make such reports; install, use and maintain such monitoring equipment; sample such effluents; and provide such other information as may reasonably be required to carry out the objectives of the CWA.
16. Section 309(a) of the CWA, 33 U.S.C. § 1319(a), authorizes the Administrator of the EPA to issue an order requiring compliance with the CWA when any person is found to be in violation of Section 301 of the CWA, 33 U.S.C. § 1311, for, among other things, violating any condition or limitation contained in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

B. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Director makes the following findings of fact and conclusions of law:

1. Stitzel's Waterpoint Farms, Inc. ("Respondent"), owns and operates Stitzel's Waterpoint Farms located at 105 Waterpoint Drive in Springfield Center, New York ("Facility") and Respondent is an owner or operator within the meaning of 40 C.F.R. § 122.2.
2. Respondent is a corporation, and is therefore a "person," as that term is defined in Sections 502(5) and 502(4) of the CWA, 33 U.S.C. §§ 1362(5) and 1362(4).
3. The Facility confines and feeds or maintains mature dairy cows for a total of forty-five (45) days or more in any twelve-month period, and neither crops, vegetation, forage growth, nor post-harvest residues are sustained in the normal growing season over any portion of the lot or facility. Therefore, the Facility is an AFO as defined by 40 C.F.R. § 122.23(b)(1), and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
4. The Facility confines approximately 380 mature dairy cows on-site. Therefore, the Facility is operating as a medium CAFO as that term is defined in 40 C.F.R. § 122.23(b)(4)(i).
5. The Facility discharges stormwater to Otsego Lake, a navigable water of the United States, via an unnamed tributary to Hayden Creek and Hayden Creek, which is also a water of the United States, as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.
6. On June 18, 1999, the NYSDEC issued SPDES General Permit for CAFOs No. GP-99-01, with an effective date of July 1, 1999, and an expiration date of June 30, 2004.

7. On June 24, 2004, the NYSDEC issued SPDES General Permit for CAFOs No. GP-04-02, with an effective date of July 1, 2004 and an expiration date of June 30, 2009 ("CAFO General Permit" or "Permit"). GP-04-02 has been administratively extended.
8. On June 23, 2004, Respondent applied for coverage and received coverage under the CAFO General Permit with the authorization No. NYA000194. Respondent has been covered as a Medium CAFO under the conditions and limitations in the permit at all relevant times addressed by the Order.
9. On October 27, 2015, the EPA conducted an inspection of Respondent's Facility.
10. Based on the inspection findings, the EPA finds that Respondent has failed to comply with the CWA and the conditions and limitations of the CAFO General Permit, including but not limited to the following:
 - a. Section X.G of the CAFO General Permit requires the permittee to at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the Permit. At the time of the inspection, inadequate operation and maintenance was observed at the following locations, in violation of Section X.G of the CAFO General Permit:
 - i. Pooling silage leachate was observed immediately south of the screens and in the level lip spreader; and
 - ii. Concentrated flow paths, vegetation kill zones and pooling liquids were observed extending from the level lip spreader distribution system south into the Vegetated Treatment Area ("VTA").
 - b. Section VII.A of the CAFO General Permit requires that Comprehensive Nutrient Management Plans ("CNMPs") be prepared in accordance with "NRCS Conservation Practice Standard No. NY312", which states, *inter alia*, that clean water shall be excluded from concentrated waste areas to the fullest extent practical. At the time of the inspection, EPA inspector McEathron observed that a concentrated waste area and manure loading area south of the Freestall Barn were exposed to stormwater, without clean water exclusions, such as berms and roof drains and, upon review of Respondent's CNMP, discovered that it did not include measures necessary to exclude clean water from these areas. Therefore, Respondent failed to prepare its CNMP in accordance with NRCS Conservation Practice Standard No. NY312, in violation of Section VII.A of the CAFO General Permit.
 - c. Section VI.A of the CAFO General Permit prohibits the discharge of process wastewater pollutants to the surface waters of the State. At the time of the inspection, EPA inspector McEathron observed that, because a concentrated waste area and manure loading area south of the Freestall Barn were exposed to stormwater and were without clean water exclusions, production area runoff containing process wastewater pollutants, including manure, feed and bedding, had discharged into the tributary to Hayden Creek via a catch basin and outfall pipe, in violation of Section VI.A of the CAFO General Permit.

- d. Section VII.E of the CAFO General Permit requires the permittee to comply with all provisions of the CNMP. EPA inspector McEathron reviewed manure application records and identified that actual manure application rates exceeded CNMP recommendations in Crop Year 2015 for four (4) fields (L10, L9, Mang and T1) and one (1) field in Crop Year 2014 (T1). Therefore, Respondent failed to comply with the manure application recommendations in the CNMP, in violation of Section VII.E of the CAFO General Permit.
11. Based upon Paragraphs 1-10 above, the EPA finds that Respondent has violated Section 301 of the CWA, 33 U.S.C. § 1311, for failing to comply with the conditions and limitations in the CAFO General Permit.

C. REQUESTED INFORMATION

Based on the Findings of Fact and Conclusions of Law, above, and pursuant to the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), Respondent is required to submit the following to EPA, with a copy to NYSDEC:

1. A written response detailing how each of the listed Areas of Concern in the enclosed Inspection Report were addressed within **sixty (60) calendar days** of receipt of this Order.
2. Written quarterly progress reports summarizing the measures taken to comply with each of the Ordered Provision Items a through c until full compliance with the Order and Permit are achieved. Such reports shall include photographs documenting measures implemented and costs associated with each Item. Quarterly progress reports are **due March 31, 2016, June 30, 2016 and September 30, 2016**. If full compliance is not achieved by September 30, 2016, subsequent reports will be due on the last day of each calendar quarter, until full compliance is achieved.

D. ORDERED PROVISIONS

Based upon the foregoing Findings of Fact and Conclusions of Law and pursuant to the authority of Section 309(a) of the CWA, 33 U.S.C. § 1319(a), Respondent is hereby ORDERED to do the following:

1. Immediately upon receipt of this Order, a responsible official of the Respondent shall complete and sign the acknowledgment of receipt and return the acknowledgment page to the Chief, Water Compliance Branch, in the enclosed envelope to the address listed in paragraph E.1, below.
2. Respondent shall complete the following items in accordance with the schedule listed below:

Item	Completion Deadline
a. Revise the CNMP to include practices that divert and exclude clean water to the fullest extent practical from the concentrated waste area and manure loading area located south of the Freestall Barn, as required by Section VII.A of	Within thirty (30) calendar days of receipt of this Order.

the CAFO General Permit. Submit a copy of the CNMP to EPA.	
b. Comply with all provisions of the CNMP, including manure application rates at or below manure application recommendations and clean water diversions and exclusions in the CNMP, as required by Section VII.E of the CAFO General Permit.	Within thirty (30) calendar days of receipt of this Order.
c. Properly operate and maintain the area south of the Freestall Barn to prevent and eliminate pollutants, manure, bedding and feed from being carried via stormwater into the Hayden Creek tributary, including removing any spilled or tracked manure and implementing practices designed to prevent spilled and tracked manure at all times and eliminate the discharge of process wastewater, as required by Section VI.A of the CAFO General Permit. This includes both short term temporary measures and completion of long term permanent measures.	Begin implementation immediately upon receipt of this Order and complete no later than September 30, 2016.
d. Properly operate and maintain systems of treatment and control in accordance with the CAFO General Permit and NRCS Standards, including but not limited to addressing the following with both short term temporary measures and completion of long term permanent measures, in accordance with Section X.G of the CAFO General Permit: <ul style="list-style-type: none"> i. Pooling silage leachate was observed immediately south of the screens and in the level lip spreader; and ii. Concentrated flow paths, vegetation kill zones and pooling liquids was observed extending from the level lip spreader distribution system south into the Vegetated Treatment Area ("VTA"). 	Begin implementation immediately upon receipt of this Order, and complete no later than September 30, 2016.
e. Submit the report requested in paragraph C.1, above.	Within sixty (60) calendar days of receipt of this Order.
f. Submit the Quarterly Progress Reports requested in paragraph C.2, above.	March 31, 2016, June 30, 2016, and September 30, 2016. If full compliance is not achieved by September 30, 2016, subsequent reports will be due on the last day of each calendar quarter, until full compliance is achieved.

E. GENERAL PROVISIONS

1. Any information or documents to be submitted by Respondent as part of this Order shall, pursuant to 40 C.F.R. § 122.22, be sent by certified mail or its equivalent to:

Doughlas McKenna, Chief
Water Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway - 20th floor
New York, New York 10007-1866

Joseph DiMura, P.E., Director
Bureau of Water Compliance Programs
Division of Water, NYSDEC
625 Broadway
Albany, New York 12233-3506

and shall be signed by an authorized representative of Respondent, and shall include the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

2. Immediately upon receipt of the original copies of this Order, a responsible official of the Respondent shall complete and sign the acknowledgment of receipt, return the acknowledgment page to the Chief, Water Compliance Branch, in the enclosed envelope to the address listed in paragraph E.1.
3. Respondent shall have the opportunity, for a period of twenty (20) days from the effective date of this Order, to confer regarding the Requested Information or Ordered Provisions, with the Agency representative named above, in paragraph E.1.
4. Respondent may seek federal judicial review of the CWA Section 309(a) Administrative Compliance Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
5. This Order does not constitute a waiver from compliance with, or a modification of, the effective terms and conditions of the CWA, its implementing regulations, or any applicable permit, which remain in full force and effect. It is an action taken by the EPA to ensure swift compliance with the CWA, and its issuance shall not be deemed an election by the EPA to

forego any civil or criminal actions for penalties, fines, imprisonment, or other appropriate relief under the CWA.

6. Notice is hereby given that failure to provide the information requested in Section C, above, pursuant to CWA Section 308(a), may result in Respondent's liability for civil penalties for each violation of up to \$37,500 per day under Section 309(d) of the CWA, as modified by 40 C.F.R. Part 19. Upon suit by the EPA, the United States District Court may impose such penalties if, after notice and opportunity for a hearing, the Court determines that Respondent has failed to provide any of the Requested Information. You may also be subject to administrative remedies for failing to comply with the Information Request, as provided by Section 309 of the CWA.
7. Notice is also given that failure to complete the provisions ordered in Section D, above, pursuant to CWA Section 309(a), may result in Respondent's liability for civil penalties for each violation of up to \$37,500 per day under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Upon suit by the EPA, the United States District Court may impose such penalties if, after notice and opportunity for a hearing, the Court determines that Respondent has violated the CWA as described above and failed to comply with the Ordered Provisions. The District Court has the authority to impose separate civil penalties for any violations of the CWA and for any violations of the Administrative Compliance Order.
8. If any provision of this Order is held by a court of competent jurisdiction to be invalid, any surviving provisions shall remain in full force and effect.
9. This Order shall become effective upon the date of execution by the Director, Division of Enforcement and Compliance Assistance.

Dated: FEBRUARY 3, 2016

Signed: _____
Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

Stitzel's Waterpoint Farms, Inc.
P.O. Box 207
105 Waterpoint Drive
Springfield Center, New York 13468

RESPONDENT

Proceeding pursuant to Sections 308(a) and 309(a)
of the Clean Water Act, 33 U.S.C. §§ 1318(a) and
1319(a).

**ADMINISTRATIVE
COMPLIANCE ORDER**

CWA-02-2016-3017

**ACKNOWLEDGMENT OF RECEIPT OF
ADMINISTRATIVE COMPLIANCE ORDER**

I, _____, an authorized representative of the Respondent, with
the title of, _____, do hereby acknowledge the receipt of copy of the
ADMINISTRATIVE COMPLIANCE ORDER, CWA-02-2016-3017.

DATE: _____

SIGNED: _____